BANKRUPTCY—FILING OF SCHEDULES AS A WAIVER OF RIGHT TO REFUSE TO BE CROSS-EXAMINED UPON THEM—LIMITS TO THE PROTECTION AGAINST SELF-INCRIMINATION.—In an involuntary proceeding in bankruptcy, the bankrupt filed his schedules, but refused to testify or to answer any questions, on the general ground that his answers might tend to incriminate him. *Held*, he must submit to full cross-examination in regard to his property, and must indicate what he fears the inquiry may discover, and how the answers might lead to exposure. *In re Tobias, Greenthal & Mendelson (Ex parte Morris)*, 215 Fed. 815.

The bankrupt's scheduling of assets amounts to an assertion that he has the assets named therein, and such assets only. *Johnson* v. *U. S.* (C. C. A.), 163 Fed. 30, 20 Am. B. R. 724, 18 L. R. A. (N. S.) 1194. It is held in the principal case that by making this assertion, he waives his right to refuse to be fully cross-examined on it, provided no new facts are brought out. If this means that he cannot refuse to be cross examined at all, the holding is perfectly sound. WIGMORE, EVIDENCE, § 2276. But if it means that the filing of the schedules is a complete waiver of the bankrupt's constitutional privilege, so that he can no longer refuse to answer any question not bringing out a new fact, it would seem erroneous. *United States* v. *Goldstein*, 132 Fed. 789, 12 Am. B. R. 755. A waiver is by definition a voluntary act. *Astricht* v. *German-American Ins. Co.*, 131 Fed. 13. And the bankrupt is compellable by law to file his schedules. *Matter of Fellerman*, 149 Fed. 244, 17 Am. B. R. 785; B. A., § 7a (8).

The constitutional right of the bankrupt to refuse to answer incriminating questions is fully established. *Counselman* v. *Hitchcock*, 142 U. S. 547; 1 VA. L. REV. 620. But it is equally well settled that the bankrupt must show some reasonable basis for his claim that his answers might tend to incriminate him. *Podolin* v. *Lesher, Warner Co.* (C. C. A.), 210 Fed. 97, 31 Am. B. R. 796. And the court, not the bankrupt, is to judge the reasonableness of the claim. *Re Hess*, 136 Fed. 988, 14 Am. B. R. 559. It is also settled that the bankrupt may not refuse to testify generally. *Podolin* v. *Lesher, Warner Co., supra.*

EVIDENCE—ADMISSIBILITY OF UNOFFICIAL RECORDS.—The defendant in an action for personal injury sought to introduce in evidence a written hospital record, kept by a physician whose information was obtained in part from his associates and subordinates. It was not shown that the testimony of the eye-witnesses themselves could not be had. *Held*, the record is admissible. *Ribas* v. *Revere Rubber Co.* (R. I.), 91 Atl. 58.

It is usually held that unofficial records contemporaneous with the event are admissible in evidence if they are kept by disinterested persons in the usual course of business or employment. *Culver* v. *Marks*, 122 Ind. 554, 23 N. E. 1086, 17 Am. St. Rep. 377, 7 L. R. A. 489; *Blackburn* v. *Crawfords*, 3 Wall. 175. But it seems on both principle and authority, that the admission of the record alone when the eye-witnesses were available, is a violation of the "best evidence" rule. *Harkness* v. *Swissdale*, 238 Pa. 544, 86 Atl. 478; *Cashin* v. *Railroad*, 185 Mass. 543, 70 N. E. 930. In most instances where unofficial records are admitted

it appears that no better evidence was obtainable. A baptismal certificate has been admitted when the officiating clergyman was available, but here the testimony of the clergyman was held to have been dispensed with by the agreement of the counsel. *Weaver* v. *Lieman*, 52 Md. 708.

The entries need not be made upon personal knowledge provided the information is communicated to the enterer, by one having such knowledge, in the course of duty. *Jones* v. *Long*, 3 Watts (Penn.) 325. Thus a train dispatcher was permitted to read to the jury entries in his record book, though the information had been furnished by others and was not within his personal knowledge. *Hitchener* v. *Railroad*, 158 Fed. 1011. Records compiled from entries in a salesman's account book, the salesman being dead and the book destroyed, have been admitted. *Stanley* v. *Wilkerson*, 63 Ark. 556, 39 S. W. 1043. Some courts refuse such evidence, however, taking the view that such evidence would be rejected even though the enterer were living, as hearsay, and that his death could not improve its value in that respect. *Chaffee* v. *United States*, 18 Wall. 516.

The leading case on this question is *Price* v. *Earl of Torrington*, Salkeld 285, 1 Smith L. C. 390, where draymen employed to deliver beer made their reports to a bookkeeper who made entries of such reports in a record book which the draymen signed, and the record was held admissible. See a full discussion in 2 WIGMORE, EV., § 1521.

EVIDENCE—NECESSITY TO ESTABLISH IDENTITY IN ORDER TO RENDER A TELEPHONIC CONVERSATION ADMISSIBLE.—Plaintiff sought to establish the breach of a contract by the admission of a certain telephonic conversation. The plaintiff's witness could not identify the defendant. *Held*, in the absence of any personal means by which the witness could identify the defendant to his own knowledge, the evidence was not admissible. *Mankes* v. *Fishman* (App. Div.), 149 N. Y. Supp. 228. See NOTES, p. 226.

EXECUTORS AND ADMINISTRATORS—POWERS—SALE OF LAND.—A will directed all debts to be paid, and certain cash legacies, from an estate consisting in bulk of real property. The debts and legacies amounted to more than the personalty. The will contained a further direction that the estate be closed up as quickly as possible. *Held*, the executors have implied power to sell the real estate, but not to mortgage it. *Heiseman* v. *Lowenstein* (Ark.), 169 S. W. 224.

Where the intention of the testator cannot be carried out without turning the real estate into money, a power to sell is implied. *Going* v. *Emery*, 16 Pick. (Mass.) 107. An express power to sell given by will contemplates an absolute conversion of the estate, and does not include the power to mortgage. *Haldenby* v. *Spofforth*, 8 L. J. Ch. (N. S.) 238, 3 Jur. 241, 1 Beav. 390; *Stokes* v. *Payne*, 58 Miss. 614, 38 Am. Rep. 340; *Bloomer* v. *Waldron*, 3 Hill. (N. Y.) 361. *Contra, Duvall's Appeal*, 38 Pa. St. 112. For the reason that a mortgage even at law is now treated as a mere security for a debt and not as a sale on condition. *Stokes* v. *Payne, supra*. However, it would seem a general power of disposal of